IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1185 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

---

NARSINHBHAI BABERBHAI PATEL & 1

Versus

SHANTABEN WD/O SHIVABHAI VARIBHAI PATEL

---

Appearance:

MR BG PATEL for Petitioners

MR HM PARIKH for Respondent No. 1

---

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 09/01/2001

ORAL JUDGEMENT

1. The applicants herein have challenged the judgement and order passed in M.A.C.P No. 237/94 by M.A.C. Tribunal (Special) Kheda at Nadiad on September

13, 1994. By virtue of that judgement and order the Tribunal awarded an interim compensation of Rs.25,000/- with running interest at the rate of 15% per annum in favour of present respondent who was the claimant in that application before the Tribunal. In that application before the Tribunal the applicants herein were the opponents. The application was preferred under Section 140 of the Motor Vehicles Act for interim compensation on account of death of one Shivabhai Varibhai Patel in a vehicular accident on March 25, 1994 near village Rampur in Kheda District. The allegation in the application was that the accident was caused out of use of scooter No. GBR 7628 which was driven by present applicant no. 2 and owned by present applicant no. 1. The Tribunal accepted the case of the claimant and passed the order in question.

2. The applicants are aggrieved by the said order only for the reason that according to them they are nowhere connected with the accident. The vehicle no. GBR No. 7628 owned by present applicant no. 1 was not involved in the accident. Present applicant no. 2 was only a pillion rider on scooter No. GJ-7D-3614 which was involved in the accident and a wrong award is passed against the present applicants by the Tribunal.

3. Mr. Patel, learned Advocate appearing for the Revisionist, has drawn attention of this Court to the FIR lodged with Vaso Police Station on the day of the accident by one Jagdishbhai Ranchodbhai Patel wherein he has stated that he witnessed the accident and that scooter No. GJ-7-D-3614 was involved in the accident. It is stated in the FIR that present applicant no. 2 was the pillion rider. Mr. Patel has drawn attention to affidavit sworn by Arvindbhai Purshotambhai Patel, independent witness who also indicated that scooter no. GJ-7-D-3614 was involved in the accident. Mr. Patel therefore urged that Tribunal has erred in exercising the jurisdiction by passing an award against the present applicant.

4. Mr. H.M. Parikh, learned Advocate appearing for the respondent, submitted that the Tribunal has, after appreciating the evidence, passed the order in question. It was found by the investigating agency that a false case was made out in the FIR and a wrong scooter No. was given in the FIR, whereas in fact scooter number GBR-7628 was involved in the accident which was driven by present applicant no. 2 and owned by applicant no. 1. The police after due investigation, filed charge sheet against present applicant no. 2 and the case of the

claimant from the beginning is that scooter No. GBR-7628 was involved in the accident. Mr. H.M. Parikh submitted that no jurisdictional error can be said to have been committed nor can it be said that the jurisdiction is exercised illegally by the Tribunal. This Revision Application may therefore be dismissed.

5. Having regard to rival contenti[ons one fact remains undisputed that scooter No. GBR- 7628 is owned by present applicant no. 1. The question that is to be considered is whether the Tribunal can be said to have committed an error worth interference in exercise of powers under Section 115 of C.P.C while passing the order accepting the involvement of the said scooter in the accident.

6. It is true that in the FIR scooter No. GJ-7-D-3614 was indicated to have been involved in the accident. On the basis of that very FIR, the investigating agency on investigation, found that the information given in the FIR was not correct and that in fact scooter No. GBR No. 7628 was involved in the accident and that it was driven by present applicant no. 2 at the relevant time and therefore a charge sheet has been filed against present applicant no. 2. Under the circumstances, while passing an order for interim compensation, the Tribunal cannot be said to have committed any jurisdictional error nor can it be said to have exercised the jurisdiction illegally or with a material irregularity. The order in question does not call for any interference in this Revision Application under Section 115 of C.P.C. The Revision Application must fail and the same is, therefore, dismissed.
Ad interim order stands vacated. Rule is discharged. No costs.

(A.L. DAVE,J.)

siji